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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/740,584	12/18/2000	Jeffrey Morgan Alden	GP-301022	6367

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Legal Staff  
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EXAMINER

WILSON, ALLAN R

ART UNIT	PAPER NUMBER
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2815

DATE MAILED: 12/01/2005

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/740,584  
Filing Date: December 18, 2000  
Appellant(s): ALDEN ET AL.

**MAILED**

DEC 1 2005

**GROUP 2800**

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John A. Miller  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed October 14, 2005 Appealing from the Office action  
mailed May 4, 2005.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 1-19. All of the pending claims stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

### **WITHDRAWN REJECTIONS**

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The rejection of claims 1-19 under 35 U.S.C. § 102 is withdrawn.

### **(6) Grounds of Rejection to be Reviewed on Appeal**

### **WITHDRAWN REJECTIONS**

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The rejection of claims 1-19 under 35 U.S.C. § 102 is withdrawn.

### **(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

### **(8) Evidence Relied Upon**

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1-19 are drawn to a process that does nothing more than manipulate an idea. Specifically, the claims *define* entities, *perform mathematical* or other *processes* on the entities, and *analyze* changes in the entities but do not claim a practical application; the claims do not produce a concrete, useful and tangible result to form the basis of statutory subject matter.

**(10) Response to Argument**

The argument that “claims 1-19 fully comply with §101. MPEP 2106 states that a claimed invention is in compliance with §101 if it produces a “useful, concrete and tangible result” is not persuasive. The Examiner maintains the response made in the Advisory Action mailed on 07/08/05 that “visually analyzing changes in the sub-model includes analyzing changes in the size of at least one data entity” does not disclose how this is useful or tangible, and it is not concrete. Applicant has not claimed a practical application. The specification does disclose possible practical application, *e.g.* ways to determine annual profit and total annual cost. However, what is claimed is insufficient to convey that practical application to one of ordinary skill in the art.

The argument that “MPEP 2106 II A states that the Examiner has ‘the burden to establish a *prima facie* case that the claimed invention as a whole is directed to solely an abstract idea or

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to manipulation of abstract ideas or does not produce a useful result. Only when the claim is devoid of any limitation to a practical application in the technological arts should it be rejected under 35 USC 101.’ Appellant respectfully submits that the Examiner has not met this burden because he has not specifically stated how all of the claims are devoid of any limitation to a practical application” is not persuasive. The Final Office Action mailed 05/04/05 states “the claims *define* entities, *perform mathematical* or other *processes* on the entities, and *analyze* changes in the entities but do not claim a practical application” (underline added for emphasis). The rejection clearly states the claims do not claim any practical application. The claimed invention is directed to the abstract ideas such as “data entities” and manipulation of abstract ideas such as “calculation entities.” These are not a practical application in the technological arts.

Appellants’ argument that the claimed invention does produce a useful, concrete and tangible result is not persuasive. There is no practical use for “calculation entities.” They are not concrete or tangible. Appellants’ additionally argue that “The claimed invention is tangible because things (entities) are specifically defined that have a specific purpose in the system model and identify a specific thing about the system.” MPEP II. A. states:

“[T]ransformation of data, representing discrete dollar amounts, by a machine through a series of mathematical calculations into a final share price, constitutes a practical application of a mathematical algorithm, formula, or calculation, because it produces a useful, concrete and tangible result’ -- a final share price momentarily fixed for recording and reporting purposes and even accepted and relied upon by regulatory authorities and in subsequent trades.” State Street, 149 F.3d at 1373, 47 USPQ2d at 1601

Things like “sub-model,” “medium,” and “entities” are not practical items like “discrete dollar amounts” or “final share price.” They are not relied upon by regulatory authorities.

Appellants further argue “claimed invention further has useful, concrete and tangible results because it allows the system model to be separated the system model into sub-models so that a person can analyze a portion of the operation of the system without having to analyze the whole system model.” Limitations like “system model” and “sub-models” do not convey any practical application. They may represent some application, but this has not been claimed.

The argument that “the invention as claimed satisfies §101 because it is more than an abstract idea and requires “physical acts to be performed outside of the computer” MPEP 2106B 2(b)(i)” is not persuasive. MPEP 2106B 2(b)(i) goes on to say “where those acts involve the manipulation of tangible physical objects and result in the object having a different physical attribute or structure.” Appellants do not claim any tangible physical objects or result in the object having a different physical attribute or structure.

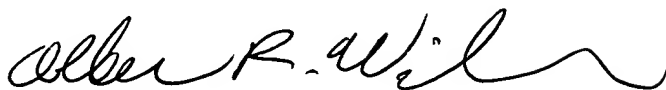
For the reason given above, the Examiner maintains the rejection.

#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

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Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Allan R. Wilson".

Allan R. Wilson  
Primary Examiner  
Art Unit 2515

Conferees:

Tom Thomas T. T.

Drew Dunn DAD